Filed 6/8/10 Marriage of Holcomb Ca4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of SHARON L. and ROBERT L. HOLCOMB.	
SHARON L. HOLCOMB, Appellant, v. ROBERT L. HOLCOMB, Respondent.	E048031 (Super.Ct.No. FAM53928) OPINION

APPEAL from the Superior Court of Riverside County. L. Jackson Lucky, IV, Judge. Reversed with directions.

Robert M. Bennett and Robert Martin Bennett for Appellant.

Hanson, Hales, Gorian & Bradford and Erik J. Bradford for Respondent.

I. Introduction

Sharon Ostrom (formerly Sharon L. Holcomb) appeals from a postjudgment order in a marital dissolution proceeding. The issue on appeal involves how much interest Robert L. Holcomb is liable to pay on an equalization payment as part of a stipulated

judgment. We conclude the trial court erred and reverse.

II. Factual and Procedural Background

The parties were married in 1963 and filed a petition for dissolution in 1985. Pursuant to the parties' stipulation, a final judgment on reserved issues was filed on July 31,1991. To equalize the division of community property, Holcomb agreed to pay Ostrom $794,800. Holcomb particularly agreed to pay Ostrom $213,000 with interest of 10 percent, from January 1, 1992, all due and payable before July 31, 1993. Holcomb paid $581,800 but did not pay the final $213,000.

In November 1996, Ostrom filed an application for an order to show cause, seeking payment of $213,000, plus 10 percent interest of about $114,000, and the proceeds from the pending sale of Doryce Florist.

In May 1997, the parties agreed to a stipulation in which Holcomb acknowledged the $213,000 debt. Ostrom agreed to accept a reduction to $50,000 as payment for the accrued interest and a reduction to 5 percent on the rate of future interest, subject to Holcomb's compliance with the terms of the stipulation. Holcomb agreed to sell a property and pay Ostrom $75,000 as soon as practicable. Holcomb further agreed to pay Ostrom $1,000 a month beginning May 1, 1997. If Holcomb failed to make any payments, the terms of the stipulation would be set aside and the interest owing on the equalization payment would be reinstated at 10 percent. The full equalization amount was due within five years on May 1, 2002. Holcomb did not make all the monthly payments and did not pay the full amount of the equalization payment, plus the $50,000 in interest, within five years.

In November 2008, Ostrom filed a motion requesting the court order payment of $288,614.51 as of October 2008. Holcomb opposed the motion.

The court found Holcomb had defaulted on the payments under the May 1997 stipulation. The court ordered payment of $213,000, minus any amounts paid, with 10 percent interest payable from May 30, 1997, instead of January 1, 1992, the effective date of the stipulated judgment. In other words, the court declined to award any interest for the period of time between the two stipulations, more than five years.

III. Analysis

We conduct an independent review of the two written stipulations that are the subject of the appeal. (*In re Marriage of Smith* (2007) 148 Cal.App.4th 1115, 1120; *In re Marriage of Davis* (2004) 120 Cal.App.4th 1007, 1017-1018.) We construe the stipulations under the rules governing the interpretation of contracts generally. (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1221; *In re Marriage of Simundza* (2004) 121 Cal.App.4th 1513, 1518; *In re Marriage of Iberti* (1997) 55 Cal.App.4th 1434, 1439.)

As has often been restated: "'The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. [Citation.] If contractual language is clear and explicit, it governs. [Citation.] On the other hand, "[i]f the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it." [Citations.]' [Citation.] 'The mutual intention to which the courts give effect is determined by objective manifestations of the parties' intent, including the words used in

the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties. [Citations.]' [Citations.]" (*People v. Shelton* (2006) 37 Cal.4th 759, 767; accord, *In re Marriage of Simundza, supra*, 121 Cal.App.4th at 1518; *In re Marriage of Davis, supra*, 120 Cal.App.4th at p. 1018; *In re Marriage of Iberti, supra*, 55 Cal.App.4th at pp. 1439-1440.)

The focus is on ascertaining and implementing the parties' mutual intent when they entered into the settlement. (*In re Marriage of Simundza, supra*, 121 Cal.App.4th at p. 1518.) In performing this task, a court must construe the judgment as a whole rather than separately considering its individual clauses (*Yarus v. Yarus* (1960) 178 Cal.App.2d 190, 201), and consider the circumstances when the parties signed the settlement agreement. (*In re Marriage of Williams* (1972) 29 Cal.App.3d 368, 378.) "[E]xtrinsic evidence is admissible to prove a meaning to which the contract is reasonably susceptible [citation] . . . ." (*In re Marriage of Simundza* at p. 1518.)

Family law judgments are "enforceable until paid in full or otherwise satisfied . . . . [¶] . . . [and] is exempt from any requirement that a judgment be renewed. Failure to renew a judgment described in this section has no effect on the enforceability of the judgment." (Fam. Code, § 291, subds. (a) and (b).) "The plain language of Family Code section 291 leaves no doubt that the Legislature did not intend to subject Family Code money judgments to the 10-year time limit for renewal under [Code of Civil Procedure] section 683.130." (*In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 499.)

The original stipulated judgment provided that Holcomb should pay Ostrom an equalization payment of $213,000 plus 10 percent interest, calculated from January 1, 1992. When Holcomb defaulted on this agreement, the parties agreed to the May 1997 stipulation, by which Holcomb was to pay $213,000 plus $50,000 interest, according to the payment schedule as set forth in the stipulation.

The second stipulation clearly provided that it was intended to be a compromise of Ostrom's claims under the stipulated judgment for the accrued interest exceeding $100,000. She agreed to accept $50,000 and a reduction to 5 percent in ongoing interest in exchange for full payment of the equalization amount by May 2002. Paragraph 6 provides: "[Ostrom] acknowledge[s] that she has been advised that the rate of interest and the method of applying payment to principal first and then interest are contrary to the usual application of the law and represent a compromise on her part to effect this settlement."

The second stipulation provides further that, in the event of Holcomb's default in any payment, "interest on the equalization payment required under the judgment in this matter shall be calculated at the statutory rate" and the compromise by Ostrom "shall be set aside and shall have no effect on the amount of interest and principal due to [Ostrom], except that [Holcomb] shall receive credit for payments made hereunder in accordance with statutory laws."

It is not disputed that Holcomb defaulted on the second stipulation, making part, but not all, of the equalization payment, which was due within five years. When Ostrom moved to enforce the judgment, the trial court correctly found Holcomb had defaulted by

not making payments according to the schedule and by not making payment in full by May 2002.

The trial court also determined that Ostrom was only entitled to receive 10 percent interest from May 1997, rather than the original settlement date of January 1, 1992. The trial court awarded no interest for the period between January 1992 and May 1997. Ostrom did not receive any benefit in exchange for loss of more than five years of interest.

The basis for the trial court's ruling appears to be its reliance on paragraph 1 of the May 1997 stipulation: "Respondent [Holcomb] acknowledges that two hundred and thirteen thousand dollars ($213,000) is due under the parties Judgment of Dissolution remains unpaid. [*Sic*.]" The trial court interpreted this paragraph to mean that only the equalization payment of $213,000, and no interest, was owing as of May 1997. We find no basis in the record for this circumscribed interpretation of paragraph 1. Nor is there statutory or case law supporting the trial court's ruling. Instead, what is obvious from the record is that there is still owed part or all of the original equalization payment of $213,000, plus accrued 10 percent interest, dating from January 1, 1992.[1]

Holcomb's argument is that the May 1997 stipulation somehow extinguishes and supersedes the 1991 stipulated judgment. First, he relies on subparagraph B of paragraph 13 of the May 1997 stipulation which provides: "This Agreement and any other

---

[1] Ostrom represents that amount to be $255,209 as of January 30, 2009. Under the trial court's erroneous ruling Ostrom would actually owe Holcomb $12,235.53, even though he was spared from paying her interest for five years.

instrument(s) executed at the same time as this Agreement contain the final, complete and exclusive agreement of the parties concerning the subject matters covered and may not be altered, amended or modified except by an instrument in writing executed by both parties. Any previous oral or written agreements between the parties are entirely superseded by this Agreement." Additionally, in order to facilitate Holcomb's sale of property and payment of $75,000, as agreed to under paragraph 7, Ostrom agreed to execute and record the release of an abstract of judgment.

Paragraph 13 does not mention the July 1991 judgment. However, if we interpreted paragraph 13 as causing the May 1997 stipulation to supersede the judgment, it would be inconsistent with paragraph 10 which contemplates that, if Holcomb defaults on the May 2007 stipulation, "interest on the equalization payment required under the judgment in this matter shall be calculated at the statutory rate and paragraphs 2, 3, 4, 5, 7, and 8 shall be set aside and shall have no effect on the amount of interest and principal due to [Ostrom], . . ." Because the May 1997 stipulation incorporates the 1991 judgment by reference, the stipulation is not an unambiguous integrated instrument. The parole evidence rule does not prohibit the introduction of extrinsic evidence to explain the meaning of a written contract. (*BMW of N. Am. v. New Motor Vehicle Bd.* (1984) 162 Cal.App.3d 980, 990, fn. 4.) Therefore, the parole evidence rule does not apply to bar evidence of the terms of the 1991 judgment. (*250 L.L.C. v. PhotoPoint Corp. (USA)* (2005) 131 Cal.App.4th 703, 725; *Masterson v. Sine* (1968) 68 Cal.2d 222, 225; see Code Civ. Proc., § 1856, subds. (a) and (b).)

As to release of the abstract of judgment, it is also clear in the May 1997

stipulation that the release was only meant to allow Holcomb to sell property in order to pay Ostrom. It was not meant as a release of the judgment, the equalization payment, or accrued interest.

Finally, we reject Holcomb's citation to Code of Civil Procedure section 685.020, subdivision (a), stating that interest on a money judgment begins to accrue on the date of entry of the judgment. Entry of judgment in this case occurred on July 31, 1991. Accrual of interest was postponed by the judgment until January 1, 1992. The judgment was not entered on May 1, 1997, the effective date of the stipulation. Even if Code of Civil Procedure section 685.020, subdivision (a), applies, it actually supports Ostrom's position rather than Holcomb.

IV. Disposition

The interest on the equalization payment of $213,000 began accruing on January 1, 1992. When Holcomb defaulted under the May 1997 stipulation, the agreement to compromise on the amount of accrued interest became void.

Therefore, we reverse the trial court's order of January 30, 2009, and remand for the trial court to make a determination of the amounts still owing to Ostrom as calculated under the July 1991 judgment.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/Richli
J.

We concur:

s/Hollenhorst
Acting P. J.

s/McKinster
J.